

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 MILDRED C. FREESTON, et al.,

11 Plaintiffs,

12 v.

13 BISHOP, WHITE & MARSHALL, P.S.,
14 et al.,

15 Defendants.

CASE NO. C09-5560BHS

ORDER DENYING
PLAINTIFFS' MOTION FOR
INJUNCTION

16 This matter comes before the Court on Plaintiffs' Motion for Injunction (Dkt. 21).
17 The Court has considered the pleadings filed in support of and in opposition to the motion
18 and the remainder of the file and hereby denies the motion for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On September 17, 2009, Plaintiffs filed a complaint (Dkt. 2) and an Emergency
21 Motion for Removal of Case from Pierce County Superior Court (Dkt. 6). Plaintiffs
22 assert that the Court has jurisdiction pursuant to 42 U.S.C. § 1983 and "other Federal
23 Statutes" Dkt. 2, ¶ 1. The majority of Plaintiffs' claims are based on fraud, but one
24 claim asserts a violation of the Federal Truth in Lending Act. *Id.*, ¶ 19.

25 On September 21, 2009, Plaintiff filed a First Amended Complaint. Dkt. 8.

26 On September 22, 2009, the Court denied Plaintiffs' emergency motion for
27 removal. Dkt. 9.

1 On October 26, 2009, Defendant Chevy Chase Bank appeared in this matter. Dkt.
2 11.

3 On November 12, 2009, Plaintiffs filed an Emergency Motion/Application for
4 Temporary Restraining Order. Dkt. 12. In support of their motion, Plaintiffs have
5 submitted an eviction notice that states that eviction will occur at 6 AM on November 16,
6 2009. *Id.*, Exh. 1 at 14.

7 On November 13, 2009, the Court requested a response from Defendant Chevy
8 Chase Bank (Dkt. 13), Defendant filed a response (Dkt. 14), and the Court denied
9 Plaintiff's motion because of (1) Plaintiffs' procedural errors and (2) Plaintiffs' failure to
10 meet their burden on the elements of preliminary relief. Dkt. 16.

11 On November 20, 2009, Plaintiff filed a Motion for Injunction. Dkt. 21. On
12 November 24, 2009, the Court ordered responses from Defendants. Dkt. 25. On
13 December 4, 2009, Defendants Pierce County, Pierce County Superior Court, Robyn Ann
14 Lindsay, Bryan Chushcoff, Pierce County Sheriff Department, and Paul Pastor responded
15 (Dkt. 27); Defendants Fannie Mae, Bishop, White & Marshall, P.S., William L. Bishop,
16 Jr, Krista L. White, Ann T. Marshal, Daniel Hembree, and Annette Cook responded (Dkt.
17 29); and Defendant Chevy Chase Bank responded (Dkt. 29).

18 **II. FACTUAL BACKGROUND**

19 In the complaint, Plaintiffs allege facts as follows:

20 Defendant CHEVY CHASE BANK FSB induced Charles E.
21 Freeston, prior to his death, and, Plaintiff Mildred C. Freeston in to engage
22 a new mortgage by enticement to lower mortgage cost of \$300 per month.
23 The mortgage cost were actually \$372.00 more than prior. During this time
24 my husband Charles E. Freeston was ill and he died and the CHEVY
25 CHASE BANK FSB agent knew of this situation.

26 CHEVY CHASE BANK FSB used predatory tactics, and took
27 advantage of senior citizens. Mildred C. Freeston is 84 years, and Shirsha
28 Sumeru is 65. We had problems with Charles's retirement funds and
couldn't make the payments. CHEVY CHASE BANK FSB foreclosed
when we couldn't even catch up because the Medicaid - Nursing Home bills
were horrendous before Charles's death. CHEVY CHASE BANK FSB
engaged BISHOP, WHITE & MARSHALL, P.S. for the foreclosure as
trustee.

The foreclosure proceeded to conclusion. The house was taken over
by FANNIE MAE, on April 3, 2009. FANNIE MAE engaged BISHOP,

1 WHITE & MARSHALL, P.S. as trustees for the sale from CHEVY
2 CHASE BANK FSB and auction process.

3 BISHOP, WHITE & MARSHALL, P.S. acted for both parties. The
4 seller of a foreclosed home CHEVY CHASE BANK FSB and FANNIE
5 MAE, a U.S. Government instrumentality the buyer.

6 ***

7 Bishop, White & Marshall, P.S., filed for eviction unlawful detainer
8 and writ of possession. The hearing was on July 13, 2009 Mildred C.
9 Freeston read into the record a statement relating the fraud. Only then did
10 Commissioner James B. Marshall read our defenses as we were authorized
11 to present according to Washington laws governing such matters.
12 Commissioner Marshal ordered a hearing which has been held off. We
13 believe there is a court date before Commissioner Robyn Lindsay
14 September 15, 2009. Commissioner Marshall ordered BISHOP WHITE &
15 MARSHALL, PS, attorney Annette Cook to respond by briefing the federal
16 law protecting foreclosures like ours.

17 We filed counter complaints to the eviction with submission for
18 record consisting of federal court findings showing MERS had no standing,
19 CHEVY CHASE BANK FSB had no standing to foreclose. The Counter
20 Complaint has never been answered. The Counter Complaint named
21 BISHOP WHITE & MARSHALL, PS, attorney defendants covering up a
22 fraud on a federal instrumentality, FANNIE MAE.

23 Dkt. 2, ¶¶ 3-10.

24 With regard to the instant motion, Plaintiffs assert various allegations of fraudulent
25 activities and illegal eviction. Dkt. 21 at 2-3. The record, however, reflects that
26 Plaintiffs' fell behind on their mortgage payments, were given notice of a Trustee's Sale,
27 refused to vacate the property, and were given notice of an unlawful detainer action. *See*
28 Dkt 29 at 2-5. Moreover, Defendant Fannie Mae has submitted a Writ of Restitution
from Pierce County Superior Court stating that Plaintiffs shall be evicted from the
property and that the sheriff shall restore the property to Defendant Fannie Mae. Dkt. 31,
Declaration of Annette Cook, Exh. A.

29 III. DISCUSSION

30 Plaintiffs move for preliminary injunction pursuant to Fed. R. Civ. P. 65. While
31 Plaintiffs have supplied facts regarding irreparable loss, they have again failed to meet
32 their burdens for each element of preliminary relief. To obtain preliminary injunctive
33 relief, the moving party must show: (1) a likelihood of success on the merits; (2) a
34 likelihood of irreparable harm to the moving party in the absence of preliminary relief; (3)
35 a balance of equities tips in the favor of the moving party; and (4) that an injunction is in

1 the public interest. *Winter v. Natural Res. Def. Council, Inc.*, ___ U.S. ___, 129 S. Ct.
2 365, 374 (2008).


3 In this case, Plaintiffs have failed to make a showing as to each of these required
4 elements. The Court agrees with Plaintiffs that there is a likelihood of irreparable harm if
5 the eviction proceeds as planned. Plaintiffs, however, have failed to show that they are
6 likely to succeed on the merits of their federal claims for relief. Mere allegations of fraud
7 and illegal activities does not warrant a finding that Plaintiffs will likely succeed on the
8 merits. It is also unclear whether, based on the asserted claims, Plaintiffs would be
9 entitled to injunctive relief instead of damages. Therefore, the Court denies Plaintiffs'
10 request for a temporary restraining order because Plaintiffs have failed to make a showing
11 as to each element of standard for preliminary relief.

12 IV. ORDER

13 Therefore, it is hereby

14 **ORDERED** that Plaintiffs' Motion for Injunction (Dkt. 21) is **DENIED**.

15 DATED this 22nd day of December, 2009.

16
17
18 
19 BENJAMIN H. SETTLE
United States District Judge
20
21
22
23
24
25
26
27
28